

APPENDIX VI

China--Laws, statutes, etc.

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**LAW OF THE ORGANIZATION
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LAW OF THE ORGANIZATION
OF THE JUDICIARY

IN THE

UNITED STATES OF AMERICA

BY

W. F.

THE LAW OFFICE OF THE UNIVERSITY OF CHICAGO

AND PUBLISHED BY

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CONTENTS.

Chapters	Page
I. General Provisions for the Courts.	I
II. Repealed.	
III. District Courts	3
IV. High Courts	4
V. The Court of Cassation.	6
VI. The Judicial Year, Its Business and Assignments thereof.	8
VII. Opening, Closing, and Maintaining Order in Court.	11
VIII. The Language of the Courts.	14
IX. Discussion and Determination of Judgments.	15
X. Court Attendants	17
XI. Procuratorates.	17
XII. Appointments of Judges and Procurators.	21
XIII. Registrars and Interpreters.	27
XIV. Process-Servers.	29
XV. Judicial Assistance	31
XVI. Judicial Administrative Functions and Supervising Authority	31
Additional Rules (Repealed).	

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THE LAW OF ORGANIZATION OF THE JUDICIARY

CHAPTER I

General Provisions for the Courts.

Article 1. The courts are divided into three classes :—

- (1) Repealed (1).
- (2) District Courts.
- (3) High Courts.
- (4) The Court of Cassation.

Article 2. The jurisdiction of the courts shall be both civil and criminal, but shall not extend to such cases under military or administrative law as are specially provided for by law or ordinance.

Article 3. Registrations and other noncontentious matters shall be within the jurisdiction of the courts as provided by law or ordinance.

Article 4. Repealed.

Article 5. The jurisdiction of a District Court shall be exercised by one or three judges as follows :—

- (1) Cases to be tried in the District Courts as Courts of First Instance shall be heard before one judge.
- (2) Cases to be tried in the District Courts as Courts of Appeal shall be heard before three judges sitting together.
- (3) Cases of a complicated nature to be tried in the District Courts as Courts of First Instance shall, in conformity with the powers conferred on the court or on the motion of any party to the case, be heard before three judges sitting together.

(1) That is, Local Courts which were abolished in 1915, and their functions relegated to the District Courts.

When a case has been tried in a District Court as a Court of First Instance before a judge empowered to hear cases alone and afterwards by three judges sitting together as provided in subsection 3 of this Article, the procedure followed by the judge empowered to hear cases alone shall remain in force.

Article 6. The jurisdiction of a High Court shall be exercised by three judges sitting together.

Each High Court sitting as a Court of Final Appeal may at the discretion of the president of the court increase the number of its judges to five.

Article 7. The jurisdiction of the Court of Cassation shall be exercised by five judges sitting together.

Article 8. When a case is heard before several judges the president of the division shall preside and in his absence the presiding judge shall be the senior judge of the division.

A judge empowered to hear cases alone shall discharge all the functions of a presiding judge.

Article 9. The trial or judgment of any case by a judge of a competent court shall not be rendered ineffective by any mistake in the assignment of business or in the order of rotation for a judge discharging his functions ad interim in the place of another judge as provided by this law. The same shall be applicable to registrations and other noncontentious matters.

Article 10. The rules for the District Courts, the High Courts, or the Court of Cassation, shall be applicable to trials in or judgments by their respective branch courts, unless otherwise provided.

Article 11. The establishment and abolition of any court and the division or alteration of the districts over which such court exercises jurisdiction shall be as provided by law.

Article 12. The number of judges to be appointed to any court shall be fixed by the Ministry of Justice subject to the approval of the President.

Article 13. In the absence of any provision in this law for the procedure or jurisdiction of any court the Code of Procedure and any other Law or ordinance relating to procedure shall govern.

CHAPTER II

(Repealed)

CHAPTER III

District Courts.

Article 17. Each District Court shall consist of as many civil and criminal divisions, and two or more judges empowered to hear cases alone shall be appointed, as the volume of business to be transacted may require.

Article 18. Each District court shall have a president, who shall direct the affairs of such court, supervise its administration and act as president of one of the divisions.

There shall be a president for each division of the District Court who, unless the president of the Court acts for it shall be appointed from among the judges of the division and he shall allot its business and supervise the same.

Article 19. Each District Court shall have both civil and criminal jurisdictions and shall deal with non-contentious matters as follows :—

As a Court of First Instance :

Cases within the jurisdiction of the Local Courts and cases not within the special jurisdiction of the Court of Cassation.

As Courts of First Appeal :

- (1) Appeals against the judgments of the Local Courts.
- (2) Motions made in accordance with any law or ordinance for setting aside the rulings and orders of the Local Courts.

Article 20. The president of any division of a District Court may direct any judge attached to his own division to conduct the preliminary examination in any criminal case, and, after the conclusion of such preliminary examination, such judge may sit as one of the trial judges.

The president of a District Court may direct a judge empowered to hear cases alone to conduct any preliminary examination.

Article 21. A branch District Court may be established in any province where local circumstances made it necessary.

Article 22. In a branch District Court there may be only one civil and one criminal divisions and one or more judges empowered to hear cases alone..

Article 23. Repealed.

Article 24. In a branch District Court with two or more divisions and two or more judges empowered to hear cases alone the senior judge shall be appointed the superintending judge and shall supervise the administration of such branch court.

Section 2. Repealed.

CHAPTER IV

High Courts.

Article 25. The number of the civil and criminal divisions of each High Court shall be determined by the volume of business to be transacted by each of such courts.

Article 26. Each Court shall have a president who shall direct the business of such court and supervise its administration.

There shall be a president in each division of a High Court appointed from among the judges of the division, and he shall allot its business and supervise the same.

Article 27. Each High Court shall have jurisdiction to hear :—

- (1) Appeals against the judgments of the District Courts as Courts of First Instance.
- (2) Appeals against the judgments of the District Courts of First Appeal.
- (3) Motions for setting aside the rulings or orders of the District Courts in accordance with any law or ordinance.
- (4) Repealed.

Article 28. The High Court in any province where distance or other circumstances render it necessary may establish a branch court in any District Court within its jurisdiction.

Article 29. In a branch High Court there may be only one civil and one criminal divisions.

Article 30. Judges of a branch High Court may, apart from those appointed by the High Court be the judges of the District Court where such branch court is established or the judges of the District Court in a neighbouring locality. When three judges sit together to hear a case, only one of them may be a District Court judge; when five judges sit together to hear a case, only two may be District Court judges.

Article 31. When in a branch High Court there are two or more divisions, a senior judge shall be appointed as superintending judge to supervise its administration.

Article 32. The provisions of Articles 35, 37, 44, 45 and 80 shall be applicable in cases of final appeal to the High Court.

CHAPTER V

The Court of Cassation.

Article 33. The Court of Cassation is the highest court and the number of its civil and criminal divisions shall be determined by the volume of business to be transacted.

Article 34. The Court of Cassation shall have a president who shall direct the work of the court and supervise its administration.

Section 2. (Repealed.)

There shall be a president in each division of the Court of Cassation appointed from among the judges of such division, unless such office is held by the President of the Court of Cassation.

The president of each division shall allot the business of his own division and supervise the same.

Article 35. The President of the Court of Cassation has authority to unify the interpretation of the law, but he has no power to direct the judges as to how they shall try or decide cases.

Article 36. The Court of Cassation shall have jurisdiction :—

- (1) As a Court of Final Appeal to hear :
 - a. Appeals against the judgments of the High Courts as Courts of First Appeal ;
 - b. Motions made in accordance with any law or ordinance for setting aside the rulings or orders of the High Courts.

- (2) As a Court of First Instance and Final Appeal to hear :

Cases which by law or ordinance are within the special jurisdiction of the Court of Cassation.

Article 37. If, during a trial in any division of the Court of Cassation as a court of final appeal, a conflict arises between the interpretation of the law and a previous application of such law whether by the same or by some other division of the court, the President of the Court of Cassation may according to the law or ordinance concerned convene a general conference of the civil or criminal divisions, or of both the civil and the criminal divisions, to decide the same.

Article 38. A case within the special jurisdiction of the Court of Cassation as a court of first instance and final appeal may be tried and decided by the Court of Cassation sitting in the High Court or District Court of the place where the case has arisen provided the importance of the case makes it necessary.

In the above circumstances the President of the Court of Cassation may direct not more than two judges of the High Court to hear the case jointly with such judges of the Court of Cassation as have been appointed for the trial.

Article 39. In all criminal cases within the special jurisdiction of the Court of Cassation as a court of first instance and final appeal the President of the Court of Cassation shall direct a judge of the Court to conduct the preliminary examination, but he may direct a High Court or Local Court judge to conduct such examination, provided the circumstances of the case make it necessary.

Article 40. A branch Court of Cassation may be established in the High Court of any province when such province is a long distance from Peking, or when communication between Peking and such province is inconvenient.

Article 41. A branch Court of Cassation may consist of only one civil and one criminal divisions.

Article 42. The judges of a branch Court of Cassation may, except those specially appointed by the Court of Cassation, be the judges of the High Court of the place where such branch court is situate but the number of High Court judges is limited to two in each division.

Article 43. When a branch Court of Cassation consists of two or more divisions one of its senior judges shall be appointed as superintending judge to supervise its administration.

Article 44. If, during a trial in any division of a branch Court of Cassation as a court of final appeal a conflict arises between the interpretation of the law and a previous application of such law whether by the same or by some other division of the court, it shall request the Court of Cassation to decide the same in a general conference.

Every judge of the branch Court of Cassation shall in that event send a copy of his opinion to the Court of Cassation.

Article 45. When the Court of Cassation or any of its branch court sends down a case to a lower court, the lower court may not in its decision controvert any point of law stated by the Court of Cassation or such branch court.

CHAPTER VI

The Judicial Year, Its Business and Assignments thereof.

Article 46. The Judicial Year shall be from the first day of January to the last day of December of each calendar year.

Article 47. The regulations for the administration of the business of the High Courts and courts shall be enforced after the President has approved them on the same being submitted to him by the Ministry of Justice.

With the exception of the Metropolitan High Court, the presidents of the High Courts in the provinces shall provide a uniform administration for all courts within their respective jurisdictions in accordance with the regulations mentioned in the last Section, and shall determine the days when such courts shall sit and the time when the office hours of such courts shall begin.

The Court of Cassation shall provide regulations for the administration of its own business and for that of its branch courts; but such regulations must be submitted to the President for approval, and, before being enforced, reported to the Ministry of Justice.

Article 48. At the end of each year the courts shall, as provided by the regulations made for the administration of their business and other ordinances, convene a conference at the end of the year to settle the following matters for their respective courts for the ensuing year :—

- (1) To allot judicial business to judges empowered to hear cases alone and also to judges empowered to hear cases with a fixed number of their colleagues.
- (2) To appoint the presidents and members of divisions and judges empowered to hear cases alone; and to determine the order of rotation when one judge shall act ad interim for another judge.
- (3) To determine the order of rotation to meet contingencies as mentioned in Article 51.

Article 49. All matters mentioned in the last preceding Article shall be decided by a majority of the persons present at the conference, and should the voting be equal, the question shall be decided by the president of the conference.

- (1) When a conference is held to discuss the

business of a District Court, the president of such court shall preside, and the presidents of all its divisions, one of its senior judges, and one judge empowered to hear cases alone shall constitute the conference.

- (2) When a conference is held to discuss the business of a High Court, the president of such court shall preside, and the presidents of all its divisions and one of its senior judges shall constitute the conference.
- (3) When conference is held to discuss the business of the Court of Cassation, the president of such court shall preside, and the presidents of all its divisions and one of its senior judges shall constitute the conference.

Section 2 (repealed).

The Court of Cassation, the High Court, and the District Courts shall determine the business of their respective branch courts; the judges empowered to hear cases with a fixed number of their colleagues and two or more judges empowered to sit alone in each of such branch courts may, in accordance with the rules set forth in the first section of this Article, discuss the matter in advance and report the result to the respective courts to which they belong.

Article 50. No alteration in the assignment of judicial business and the appointment of judges as mentioned in the last two preceding Articles shall during the same judicial year be made after they have been determined, unless the judges empowered to hear cases alone, or required to sit with others, have been overburdened by the increase of business or otherwise delayed in discharging their functions; in such cases the president of the court may make a re-assignment.

Article 51. When a judge or a deputy of any court

is for any reason absent, a judge of any court directly below such court may take his place ad interim.

When a judge of a District Court is for any reason absent an expectant judge of such court may take his place ad interim.

When judges of a lower court or expectant judges are ordered to act ad interim as judges of a higher court or of the same district court as provided in the last two preceding Sections, they shall act in accordance with the fixed order of rotation upon the receipt of a notice from such higher court or such lower court.

Section 4 (repealed).

The appointment of Acting Judges as mentioned in this Article is limited to cases of emergency.

Article 52. When by reason of any law, ordinance, or circumstances, a High Court or a lower court is unable to exercise jurisdiction, the case may be transferred to the nearest court of the same rank ; such transfer shall be limited to emergencies.

Article 53. Judicial business assigned to a judge of any court may, if not completed within the judicial year, be subsequently completed by the same judge.

CHAPTER VII

Opening, Closing, and Maintaining Order in Court.

Article 54. The court shall sit in the court buildings unless otherwise provided.

Article 55. All cases shall be argued and all judgments pronounced in open court. }

Article 56. The opening, closing, and all other matters of procedure in connection with the courts shall be under the direction of the presiding judge.

Article 57. The presiding judge shall maintain the order of the court.

Article 58. When it becomes necessary to exclude from the court any section of the public, all persons in court, before they are ordered to withdraw, shall be notified of the reasons for such exclusion, and the court shall re-admit the public when it pronounces judgment.

Article 59. When the public is to be excluded the presiding judge of the court may allow any person to remain whose presence will not inconvenience the proceedings.

Article 60. The presiding judge may order women and children or any person improperly clothed to withdraw and the matter shall be entered on the court records.

Article 61. When any person causes an interruption or commits some other improper act, the presiding judge may punish such offender according to the nature of the offence in any of the following ways :—

- (1) The offender may be ordered to leave the court.
- (2) The offender may be kept in custody until the court rises.
- (3) The offender may in addition to the punishment mentioned in the last preceding subsection be confined for a period not more than ten days or be fined a sum not more than ten yuan.

Article 62. If the plaintiff or defendant or a witness, expert, interpreter or any other person interested in the case commits any of the offences mentioned in the preceding Article, he may be punished in any of the following ways :—

- (1) If he be the accused in a criminal case and

should be dealt with according to subsection 1 or 2 of the last preceding Article, the case shall be decided immediately without hearing his defence.

- (2) If he be the plaintiff or defendant in a civil action and should be dealt with according to subsection 1 or 2 of the last preceding Article, the case shall be decided in accordance with the evidence of the parties then given in court.
- (3) If he be the accused in a criminal case or the plaintiff or defendant in a civil action and should be dealt with according to subsection 3 of the last preceding Article the order given under such subsection shall be separately pronounced from the judgment of the case.
- (4) If he be a witness, expert, interpreter, or any other person interested in the case, he may be punished as provided in subsection 3 of the last preceding Article without waiting for the rising of the court.

Article 63. The rules dealing with concurrent offences shall not be applicable in the cases mentioned in the two last preceding Articles, nor shall any appeal be allowed against any order given in accordance with these Articles.

Article 64. A lawyer who appears in court to represent or plead for any party to a case may, if he conduct himself in an improper manner, be prohibited from representing or pleading for such party.

The last preceding Section shall apply to a person, who, not being a lawyer, appears as the representative or advocate in a case for any party.

Article 65. The person who has dealt with an offence

disturbing the court shall enter the matter on the court records.

Article 66. A public officer who has committed an offence within Article 61 or 62, or a lawyer who has committed an offence within section 1 of Article 64, may be referred to the Authorities for punishment in accordance with disciplinary law.

Article 67. A judge empowered to hear cases alone has in the exercise of jurisdiction all the powers accorded in this Chapter to a presiding judge.

Article 68. All judges, procurators, registrars and other persons employed in the courts shall, during the discharge of their functions respectively appear in the official dress.

The last preceding Section shall be applicable to lawyers when they appear in court as such.

CHAPTER VIII

The Language of the Courts.

Article 69. The language of the courts shall be Chinese.

Article 70. If the plaintiff or defendant or a witness, expert or any other person interested in a case, cannot speak Chinese, what he says in court shall be interpreted.

If any of the persons mentioned in the last preceding Section is unable to understand the language used by the judge the same rule also applies.

If there is no official interpreter in court or in the procuratorate but a member thereof understands the language used by the plaintiff, defendant, witness, or expert, he may be ordered to act as interpreter.

Article 71. All documents or other papers of the

Courts shall be written in Chinese ; when dispute seems probable or some other necessity arises, notes in a foreign language or in a provincial dialect may be filed with the court records.

CHAPTER IX

Discussion and Determination of Judgments.

Article 72. When a case has to be decided by several judges the judgment shall be discussed and determined by the number of judges prescribed by this law.

Article 73. When the trial of a criminal case has extended over four days the president of the court may appoint an additional judge.

Such additional judge shall have authority to try and decide the case in the absence of any judge who on account of illness or other causes is unable to continue his sitting.

Article 74. The discussion of a judgment shall be under the direction of the presiding judge.

Article 75. The public shall not be admitted during the discussion of a judgment ; expectant and probationary judges may be present as listeners.

Article 76. When a judgment is under discussion every judge who has taken part in the trial must express his opinion.

Article 77. When a judgment is under discussion the junior judge shall express his opinion first and the presiding judge give his opinion last ; if there are several judges of equal seniority or juniority the youngest judge shall express his opinion first.

Article 78. A judgment shall be determined by a majority of opinions.

When the case is connected with a sum of money, and three or more opinions are given by different judges so that the matters cannot be settled by a majority of opinions, all such opinions shall be arranged in accordance with the various sums proposed in such opinions and the medium sum shall be taken to be the opinion of the majority.

When in a criminal case three or more opinions are given by different judges so that the matter cannot be settled by a majority of opinions, all such opinions shall be arranged in accordance with the various degrees of disadvantage to the prisoner proposed in such opinions, and the medium disadvantages shall be taken to be the opinion of the majority.

Article 79. The details of the discussion of a judgment and the opinions expressed by the different judges shall be kept strictly secret.

Article 80. A general conference of the civil or criminal division or both the civil and the criminal divisions of the Court of Cassation, shall commence only when not less than two-thirds of the judges whose division is represented in such conference are present.

Such general conference shall be under the direction of the President of the Court of Cassation. The President may himself preside or appoint as chairman a president of one of the divisions or a senior judge.

Such general conference shall settle all questions by a majority of opinions, and the opinions given by the judges of any branch Court of Cassation as provided in section 2 of Article 44 shall also be counted in the decisions of the conference.

Besides the opinions mentioned under the last preceding Section, the President of the Court of Cassation may direct the judges of its branch courts to send their opinions in advance and such opinions shall be counted in the decisions of such conference.

The provisions of Article 75-77, 78 sections 2 and 3 and the last preceding Article shall apply to any general conference of the Court of Cassation.

CHAPTER X

Court Attendants.

Article 81. In each division the number of court attendants shall be as many as may be required.

Article 82. During a trial all parties interested in the case shall be conducted into court by the court attendants. The same shall apply to preliminary examinations.

The functions of court attendants shall be regulated by the Ministry of Justice.

Article 83. Court attendants shall wear the official dress.

Article 84. Court attendants are employed or dismissed by the President of the court.

CHAPTER XI

Procuratorates.

Article 85. A procuratorate shall be established along with every court corresponding to its rank as follows :—

- (1) (Repealed) (2).
- (2) District procuratorate.
- (3) High procuratorate.
- (4) Chief procuratorate.

A branch District Procuratorate, a branch High Procuratorate, or a branch Chief Procuratorate shall be

2 i. e. The Local Procuratorates which were abolished in 1915, and their functions relegated to the District Procuratorates.

established for each branch district court, each branch high court, or each branch court of cassation.

Article 86. Each procuratorate shall have procurators as follows :—

- (1) (Repealed).
- (2) Each District Procuratorate shall have a Chief Procurator and two or more procurators.
- (3) Each High Procuratorate shall have a Chief Procurator and two or more procurators.
- (4) The Chief Procuratorate shall have a Procurator-General and two or more procurators.

Article 87. Sections 1 and 2 (repealed).

The Chief Procurator in each District or High Procuratorate and the Procurator-General in the Chief Procuratorate shall supervise the administration of their respective procuratorates.

If any branch procuratorate has two or more procurators one of such procurators shall be appointed as superintending procurator to supervise the administration of the branch procuratorate.

Article 88. The establishment and abolition of any procuratorate shall be as provided by law.

Article 89. The number of procurators shall be determined by the Ministry of Justice and approved by the President.

Article 90. The functions of a procurator are as follows :—

- (1) In criminal cases :
To make searches, institute prosecutions, conduct prosecutions and supervise the execution of judgments as provided by the Code of Criminal Procedure and other laws or ordinances.

(2) In civil cases and other matters :

To act for a party to a case or on behalf of the representative of some public concern as provided in the representative of some public concern as provided in the Code of Civil Procedure and other laws or ordinances.

Article 91. When any court is a party to a civil case, the procurator of the procuratorate established with such court shall appear as the plaintiff or the defendant.

Article 92. The jurisdiction of a procuratorate shall coincide with that of the court with which it is established.

Article 93. In matters of urgency and importance a procurator may act in any place outside the jurisdiction of his procuratorate.

Article 94. A procuratorate shall discharge its functions independently of the court with which it is established.

Article 95. Procurators shall not under any circumstances try cases themselves or interfere with a judge when he is trying a case.

Article 96. The regulations for the Chief Procuratorate and all lower procuratorates shall be enforced after having been approved by the President on the same being submitted to him by the Ministry of Justice.

The Chief Procurator of the High Procuratorate in every province except the capital shall, in accordance with the regulation above mentioned secure a uniformity in the administration of the procuratorates of the whole province and publish orders prescribing office hours for them.

Article 97. At the end of each year the Procurator-

General and the Chief Procurators shall, as provided by the regulations for all procuratorates and other ordinances, settle the following matters for their respective procuratorates for the ensuing year :—

- (1) The assignment of business among procurators.
- (2) The appointment of procurators to the different departments of a procuratorate.
- (3) (Repealed).

All business in a branch procuratorate shall be settled by the chief procurator of the procuratorate of which it is a branch.

Article 98. Procurators shall follow the orders and directions of their superiors.

When a case within the special jurisdiction of the Court of Cassation comes before it, the procurators of the High or District Procuratorate concerned in the case shall follow the orders or directions of the Procurator-General.

Article 99. A procurator of a higher procuratorate may in case of necessity act for a procurator of any of its subordinate procuratorates.

Article 100. The Procurator-General or the Chief Procurator of a High or District Procuratorate shall have authority to act in any place within his jurisdiction, and to transfer the work of any procurator of a procuratorate within his jurisdiction to a procurator of another procuratorate within the same jurisdiction.

Article 101. The Ministry of Justice may order any probationary procurator or judge to serve as an acting procurator for the transaction of business in any District Procuratorate.

Article 102. The Ministry of Justice or the Chief Procurator of the High Procuratorate of any province

may order any police officer or the chairman of the council of the city, town, or village in which a procuratorate is situate to transact the business of such procuratorate.

Article 103. Section 1 (repealed).

When a procurator of a District, High or Chief Procuratorate shall for any reason be absent, the president of the court with which it is established may on request appoint a judge of such court to serve as acting procurator.

A District Procuratorate may also appoint as acting procurator one of its expectant procurators.

The provisions of this Article shall apply only in cases of emergency.

Article 104. The judicial police of any Procuratorate shall be under the control and direction of the procurators attached to the procuratorate.

The regulations of the procuratorates for the direction of the judicial police shall be enforced after they have been approved by the President, to whom they shall be submitted by the Ministry of Justice and the Ministry of the Interior.

Article 105. In the absence of any provision in this law for the functions or procedure of procuratorates the Code of Procedure and other laws or ordinances relating thereto shall govern.

CHAPTER XII

Appointments of Judges and Procurators.

Article 106. Only such persons as have passed the two examinations mentioned in the Regulations for Judicial Examination and Appointments shall be appointed as judges or procurators. Such regulations shall be specially drawn up.

Article 107. All persons who have studied law in a law school for at least three years and obtained certificates of graduation shall be admitted to the first examination.

Graduates of the Law Department of the Government University in Peking, or of any foreign law school or university, shall be considered to have passed the first examination, provided that they have passed a special examination (1).

Article 108. Successful candidates at the first examination shall serve for two years as probationers in district courts or district procuratorates.

Article 109. Probationary judges shall be under the supervision of the presidents of their respective district courts, and probationary procurators shall be under the supervision of the chief procurators of their respective district procuratorates, and such president and chief procurators shall at the end of the probationary period report on the character and efficiency of such probationary judges and probationary procurators. The President of the Metropolitan District Court and the Chief Procurator of the Metropolitan District Procuratorate shall report directly to the Ministry of Justice; the presidents of district courts or district procuratorates in the provinces shall report indirectly to such Ministry through the high court or high procuratorate of the province where such district courts or district procuratorates are situated. Any probationary judge or probationary procurator concerning whom an unfavourable report has been made may be dismissed at any time.

Article 110. Probationary judges in a district court

1 "Special Examination" is an examination held by the Ministry of Education. Candidates must be graduates of Government or Foreign Universities or Technical Schools.

who have been on probation for not less than one year may be ordered by the president of the court to manage certain judicial affairs, but such probationary judges shall neither try cases nor attend to matters of registration or other non-contentious business.

Probationary procurators in a district procuratorate who have been on probation for not less than one year may be ordered by any procurator of the procuratorate to discharge certain procuratorial functions ; but, except as provided in Article 101, such probationary procurators may not act as procurators.

Article 111. Probationers, at the end of their probation, shall pass a second examination before they become expectant judges in district courts or expectant procurators in district procuratorates.

Article 112. Any person who has a certificate of graduation as provided in Article 107, and who for not less than three years has either taught in a metropolitan or a provincial law school or practised as a lawyer, become an expectant judge or procurator without being required to pass an examination.

Article 113. An expectant judge or procurator may be recommended for appointment as soon as there is any vacancy but the first appointment is confined to the district.

Article 114. When there is a vacancy in a Metropolitan District Court or in a Metropolitan District Procuratorate, the president of the district court or the chief procurator of the district procuratorate shall request the Ministry of Justice to appoint, as acting judge or acting procurator of such district court or district procuratorate, one of the expectant judges or expectant procurators ; when there is a vacancy in a district court or in a district procuratorate in the provinces, such request shall be made by the president of

the high court or the chief procurator of the high procuratorate of the province in which such district court or district procuratorate is situate.

Article 115. No one shall be appointed a judge or procurator in any of the following circumstances :—

- (1) Loss of capacity for public office on account of deprivation of public rights.
- (2) Having been imprisoned for not less than three years.
- (3) An undischarged bankrupt.

Article 116. The President of the Court of Cassation shall be nominated and appointed by the President.

The Procurator-General, the Presidents of the divisions of the Court of Cassation, the Leading Procurator of the Chief Procuratorate, the Presidents of the High Courts, the Chief Procurators of the High Procuratorates, the President of the Metropolitan District Court, and the Chief Procurator of the Metropolitan District Procuratorate shall be appointed by the President from among the nominees submitted to him.

The presidents of the district courts and chief procurators of the district procuratorates in the provinces together with the judges and procurators thereof shall be appointed by the President on the recommendation of the Ministry of Justice.

Article 117. The ranks and other details concerning the officers mentioned in the last preceding Article shall be specially provided for in the Public Service Law.

Article 118. No one shall be appointed a judge of a high court or a procurator of a high procuratorate unless.

- (1) He has been a judge or procurator for not less than five years, or unless
- (2) He has been made a judge or procurator for not less than five years after he has been a teacher in a law school or practised as a lawyer in accordance with Article 112.

Article 119. No one shall be appointed a judge of the Court of Cassation or a procurator of the Chief procuratorate unless :

- (1) He has been a judge or a procurator for not less than ten years, or unless.
- (2) He has been made a judge or procurator for not less than ten years after he has been a teacher in a law school or practised as a lawyer in accordance with subsection 2 of the preceding Article.

Article 120. The periods mentioned in the last two preceding Articles may be reckoned by adding together all discontinuous periods.

Article 121. A judge or procurator while in office is forbidden :—

- (1) To participate in politics.
- (2) To be a member of any political party or society or of the national or any local assembly.
- (3) To be a newspaper editor or to practice as a lawyer.
- (4) To hold any public office other than that permitted by this law.
- (5) To engage in trade or in any occupation inconsistent with the holding of a public office.

Article 122. If a judge or procurator becomes mentally incapacitated, in the province the president of the high court or the chief procurator of the high procuratorate shall report to the Ministry of Justice, and such Ministry on receipt of such report shall request the President to retire such judge or procurator ; in the Metropolitan District the head of the court or procuratorate shall report to the Ministry of Justice, which on receipt of such report, shall request the President to retire such judge or procurator.

Article 123. When any court or procuratorate is abolished or reorganized, the Ministry of Justice shall request the President to approve the payment in full of the salaries of the judges or procurators whose service have been dispensed with, and their reappointment to the first suitable vacancy.

Article 124. The salaries and the order of promotion of all judges and procurators from the President of the Court of Cassation shall be regulated by special law or ordinance apart from this law.

Article 125. The Ministry of Justice shall not remove or transfer any judge or procurator, or appoint any one to be a judge or procurator contrary to the order of appointment, or suspend him from office, or reduce his salary except in any of the following cases : —

- (1) Where any of the circumstances mentioned in Article 121 and 122 has arisen.
- (2) Where he is an expectant judge or procurator.
- (3) Where he ought to be suspended on account of being prosecuted for a crime or subjected to an investigation by the Disciplinary Commission.
- (4) Where there is a criminal judgment or a disciplinary order against him.

Article 126. The salaries of any judge or procurator shall be paid in full notwithstanding that he is subjected to an investigation by the Disciplinary Commission or prosecuted for a crime.

Article 127. All retired judges or procurators shall receive a pension in accordance with the scale fixed in the Official Salaries Regulations.

CHAPTER XIII

Registrars and Interpreters.

Article 128. Each court shall have a chief registrar and assistant registrars to take notes of trials, oral evidence, make records, file documents, keep accounts, attend to secretarial duties and other miscellaneous matters.

Subsections 1, 2 and 3 (reapealed).

Article 129. (Repealed).

Article 130. The number of registrars in a district or high court shall not be less than that of the judges in such court, and there shall be a chief registrar, who under the direction of the president of the court, shall allot the business to the assistant registrars and supervise them.

Article 131. The number of registrars in the Court of Cassation shall not be less than that of the judges in such court, and there shall be a chief registrar, who under the direction of the president of the court, shall allot the business to the assistant registrars and supervise them.

Article 132. The number of registrars in a branch district court, a branch high court, or a branch court of cassation, shall not be less than that of the judges in such branch courts.

Article 133. Each procuratorate shall have a chief registrar and assistant registrars to keep accounts, attend to secretarial duties and other miscellaneous matters.

The provisions of the last preceding Section shall be applied to branch procuratorates.

Article 134. The number of registrars in different

courts or procuratorates shall be determined by the volume of business to be transacted.

Article 135. Registrars of any court or procuratorate may act for each other in matters within their respective functions in accordance with the direction of the Chief thereof.

Article 136. The president of a district court may direct any probationary judge of such court to serve as acting registrar, and the chief procurator of a district procuratorate may direct any probationary procurator in such procuratorate to serve as acting registrar.

Such acting registrars shall add the words „ acting temporarily ” to their official signatures.

Article 137. During a trial registrars shall discharge their functions in compliance with the directions of the presiding judge ; registrars shall discharge their special functions in compliance with the directions of the judge or procurator to whom they are attached.

Registrars shall take notes of oral evidence and make or alter drafts of public documents in accordance with the directions mentioned in the last preceding Section, and if they are of opinion that any direction is improper they may record their opinion thereon.

Article 138. If a registrar acts within his lawful authority, the validity of his acts shall not be affected by the fact that they are not in accordance with the assignment of business as provided by this law.

Article 139. Registrars shall be appointed from among those who have passed the required examination.

The regulations for the examination and appointment of registrars shall be made by the Ministry of Justice subject to the approval of the President.

Article 140. The chief registrars of the Court of

Cassation, the Chief Procuratorate, the high courts, the high procuratorates, the Metropolitan District Court, and the Metropolitan District Procuratorate shall be appointed by the President on the recommendation of the Ministry of Justice. The assistant registrars of the Court of Cassation, the Chief Procuratorate, the high courts and the high procuratorates may be appointed by the Ministry of Justice, or by the President on the recommendation of the Ministry of Justice. The chief registrars of the district courts and the district procuratorates in the provinces, and the assistant registrars of all district courts and district procuratorates shall be appointed by the Ministry of Justice.

Article 141. The ranks and appointments of registrars, except as mentioned in the last two preceding Articles, shall be as provided in the Regulation for the Examination and Appointment of Registrars.

Article 142. Interpreters may be appointed to district or higher courts in Peking or in commercial centres by the Ministry of Justice or by the president of the high court concerned.

Article 143. The authority and duties of registrars and interpreters not provided for by this law shall be as provided in the Code of Procedure and other laws or ordinances relating thereto.

CHAPTER XIV

Process-Servers.

Article 144. There shall be process-servers in each district court; their functions are as follows :—

- (1) The service of judgments and orders of the court and any despatches of the procuratorate.
- (2) The execution of judgments, and the charge of

confiscated property under the direction of the court or procuratorate.

- (3) The service of notices, writs, and summonses when petitions have been received from any party to a case.

Article 145. Process-servers shall be under the direct control of their superiors.

Article 146. Process-servers shall wear the official dress.

Article 147. When there is a vacancy or other emergency the Superintendent of Process-servers may appoint one of the registrars of the court to serve as acting process-server.

Article 148. Process-servers must pass the required examination before appointment, and the regulations for the examination and appointment of process-servers shall be made by the Ministry of Justice.

Article 149. Process-servers shall be appointed by the Ministry of Justice or the presidents of high courts; this right may also be delegated to the presidents of district courts.

Article 150. Process-servers when appointed must deposit a sufficient sum of money as security.

Article 151. The salaries of process-servers shall be regulated by scale as stated in the Regulations governing their functions.

Article 152. The regulations governing the functions of process-servers shall be made by the Ministry of Justice.

Article 153. The authority and duties of process servers not provided for by this law shall be as provided

in the Regulations governing their functions the Code of Procedure, and any other laws or ordinances relating thereto.

CHAPTER XV

Judicial Assistance.

Article 154. The courts shall render mutual assistance in their judicial administration.

Section 2 (repealed).

Article 155. Procuratorates shall render mutual assistance in their administration within their respective jurisdictions.

Article 156. Registrars and process-servers shall render mutual assistance in all matters within their respective functions.

CHAPTER XVI

Judicial Administrative Functions and Supervising Authority.

Article 157. The President of the Court of Cassation, the presidents of high courts, the presidents of district courts, the Procurator-General, the chief procurators of high procuratorates, and the chief procurators of district procuratorates shall in all matters of judicial administration discharge their respective functions in the manner provided for by this law.

Article 158. The right of supervision in all matters of judicial administration shall be exercised in the following manner :—

- (1) The Ministry of Justice shall supervise all the courts and procuratorates.
- (2) The President of the Court of Cassation shall supervise his own court.

- (3) Repealed.
- (4) The presidents of high courts shall supervise their own courts and their respective subordinate courts.
- (6) (Repealed).
- (7) The Procurator-General shall supervise the Chief Procuratorate and subordinate procuratorates.
- (8) The Chief Procurators of high procuratorates shall supervise their own procuratorates and their respective subordinate procuratorates.
- (9) The Chief Procurators of district procuratorates shall supervise their own procuratorates.
- (10) (Repealed).

In branch courts or branch procuratorates all judges or procurators who have been appointed superintending judges or superintending procurators shall exercise the right of supervision as mentioned in the last preceding Section.

Article 159. The authority of a judicial superintendent shall be as follows :—

- (1) In case of neglect or transgression of duties by any person under his supervision he shall caution and exhort him to greater diligence and care.
- (2) He shall warn and endeavor to induce repentance when any person under his supervision shall conduct himself improperly.

Article 160. Any member of a court or procuratorate who neglects his judicial functions, encroaches upon the functions of others, or conducts himself improperly as mentioned in the last preceding Article and, after being warned by his superintendent, remains unrepentant or

whose misconduct is of a serious nature shall be dealt with in accordance with the Disciplinary Law.

Article 161. Judicial administrative functions and the authority to supervise as provided in the last several preceding Articles shall not be used as a means to show favour to any person under supervision.

Article 162. Any member of a court or procuratorate should state his opinion on any question of law or judicial administration, when requested to do so by the Ministry of Justice or by any judge or procurator having the right of supervision over him.

Article 163. The provisions of this Chapter shall not be so interpreted as to restrict the function and jurisdiction of any judge.

Additional Rules. Repealed.

Article 164. Repealed.

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